

## § 240.14a-20

prior year, then the nominating shareholder or nominating shareholder group must provide notice a reasonable time before the registrant mails its proxy materials, as specified by the registrant in a Form 8-K (§249.308 of this chapter) filed pursuant to Item 5.08 of Form 8-K.

INSTRUCTION TO § 240.14a-18. The registrant is not responsible for any information provided in the Schedule 14N (§240.14n-101) by the nominating shareholder or nominating shareholder group, which is submitted as required by this section or otherwise provided by the nominating shareholder or nominating shareholder group that is included in the registrant's proxy materials.

[75 FR 56787, Sept. 16, 2010]

## § 240.14a-20 Shareholder approval of executive compensation of TARP recipients.

If a solicitation is made by a registrant that is a *TARP recipient*, as defined in section 111(a)(3) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(a)(3)), during the period in which any obligation arising from financial assistance provided under the *TARP*, as defined in section 3(8) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5202(8)), remains outstanding and the solicitation relates to an annual (or special meeting in lieu of the annual) meeting of security holders for which proxies will be solicited for the election of directors, as required pursuant to section 111(e)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)(1)), the registrant shall provide a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter), including the compensation discussion and analysis, the compensation tables, and any related material.

NOTE TO § 240.14a-20: TARP recipients that are smaller reporting companies entitled to provide scaled disclosure pursuant to Item 402(l) of Regulation S-K are not required to include a compensation discussion and analysis in their proxy statements in order to comply with this section. In the case of these smaller reporting companies, the required vote must be to approve the compensation of executives as disclosed pursuant to Item 402(m) through (q) of Regulation S-K.

[75 FR 2794, Jan. 19, 2010]

## 17 CFR Ch. II (4-1-14 Edition)

## § 240.14a-21 Shareholder approval of executive compensation, frequency of votes for approval of executive compensation and shareholder approval of golden parachute compensation.

(a) If a solicitation is made by a registrant and the solicitation relates to an annual or other meeting of shareholders at which directors will be elected and for which the rules of the Commission require executive compensation disclosure pursuant to Item 402 of Regulation S-K (§229.402 of this chapter), the registrant shall, for the first annual or other meeting of shareholders on or after January 21, 2011, or for the first annual or other meeting of shareholders on or after January 21, 2013 if the registrant is a smaller reporting company, and thereafter no later than the annual or other meeting of shareholders held in the third calendar year after the immediately preceding vote under this subsection, include a separate resolution subject to shareholder advisory vote to approve the compensation of its named executive officers, as disclosed pursuant to Item 402 of Regulation S-K.

INSTRUCTION TO PARAGRAPH (a): The registrant's resolution shall indicate that the shareholder advisory vote under this subsection is to approve the compensation of the registrant's named executive officers as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter). The following is a non-exclusive example of a resolution that would satisfy the requirements of this subsection: "RESOLVED, that the compensation paid to the company's named executive officers, as disclosed pursuant to Item 402 of Regulation S-K, including the Compensation Discussion and Analysis, compensation tables and narrative discussion is hereby APPROVED."

(b) If a solicitation is made by a registrant and the solicitation relates to an annual or other meeting of shareholders at which directors will be elected and for which the rules of the Commission require executive compensation disclosure pursuant to Item 402 of Regulation S-K (§229.402 of this chapter), the registrant shall, for the first annual or other meeting of shareholders on or after January 21, 2011, or for the first annual or other meeting of shareholders on or after January 21,

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2013 if the registrant is a smaller reporting company, and thereafter no later than the annual or other meeting of shareholders held in the sixth calendar year after the immediately preceding vote under this subsection, include a separate resolution subject to shareholder advisory vote as to whether the shareholder vote required by paragraph (a) of this section should occur every 1, 2 or 3 years. Registrants required to provide a separate shareholder vote pursuant to § 240.14a-20 of this chapter shall include the separate resolution required by this section for the first annual or other meeting of shareholders after the registrant has repaid all obligations arising from financial assistance provided under the TARP, as defined in section 3(8) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5202(8)), and thereafter no later than the annual or other meeting of shareholders held in the sixth calendar year after the immediately preceding vote under this subsection.

(c) If a solicitation is made by a registrant for a meeting of shareholders at which shareholders are asked to approve an acquisition, merger, consolidation or proposed sale or other disposition of all or substantially all the assets of the registrant, the registrant shall include a separate resolution subject to shareholder advisory vote to approve any agreements or understandings and compensation disclosed pursuant to Item 402(t) of Regulation S-K (§ 229.402(t) of this chapter), unless such agreements or understandings have been subject to a shareholder advisory vote under paragraph (a) of this section. Consistent with section 14A(b) of the Exchange Act (15 U.S.C. 78n-1(b)), any agreements or understandings between an acquiring company and the named executive officers of the registrant, where the registrant is not the acquiring company, are not required to be subject to the separate shareholder advisory vote under this paragraph.

INSTRUCTIONS TO § 240.14a-21: 1. Disclosure relating to the compensation of directors required by Item 402(k) (§ 229.402(k) of this chapter) and Item 402(r) of Regulation S-K (§ 229.402(r) of this chapter) is not subject to the shareholder vote required by paragraph (a) of this section. If a registrant includes disclosure pursuant to Item 402(s) of Regula-

tion S-K (§ 229.402(s) of this chapter) about the registrant's compensation policies and practices as they relate to risk management and risk-taking incentives, these policies and practices would not be subject to the shareholder vote required by paragraph (a) of this section. To the extent that risk considerations are a material aspect of the registrant's compensation policies or decisions for named executive officers, the registrant is required to discuss them as part of its Compensation Discussion and Analysis under § 229.402(b) of this chapter, and therefore such disclosure would be considered by shareholders when voting on executive compensation.

2. If a registrant includes disclosure of golden parachute compensation arrangements pursuant to Item 402(t) (§ 229.402(t) of this chapter) in an annual meeting proxy statement, such disclosure would be subject to the shareholder advisory vote required by paragraph (a) of this section.

3. Registrants that are smaller reporting companies entitled to provide scaled disclosure in accordance with Item 402(l) of Regulation S-K (§ 229.402(l) of this chapter) are not required to include a Compensation Discussion and Analysis in their proxy statements in order to comply with this section. For smaller reporting companies, the vote required by paragraph (a) of this section must be to approve the compensation of the named executive officers as disclosed pursuant to Item 402(m) through (q) of Regulation S-K (§ 229.402(m) through (q) of this chapter).

[76 FR 6045, Feb. 2, 2011]

### § 240.14a-101 Schedule 14A. Information required in proxy statement.

#### SCHEDULE 14A INFORMATION

*Proxy Statement Pursuant to Section 14(a) of  
the Securities Exchange Act of 1934*

(Amendment No.     )

Filed by the Registrant ☐ ]

Filed by a party other than the Registrant ☐ ]

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ Confidential, for Use of the Commission  
Only (as permitted by Rule 14a-6(e)(2))

☐ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material under § 240.14a-12

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement,  
if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

☐ No fee required